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IN THE

Supreme Court of the United States

OCTOBER TERM, 19[illegible]

STANLEY JUREK,

Appellant,

vs.

COLUMBUS BAR ASSOCIATION,

Appellee.

On Appeal from the Supreme Court of the State of Ohio

JURISDICTIONAL STATEMENT

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No. .....

STANLEY JURUS,

Appellant,

vs.

COLUMBUS BAR ASSOCIATION,

Appellee.

On Appeal from the Supreme Court of the State of Ohio

JURISDICTIONAL STATEMENT

Appellant appeals from the order and judgment of The Supreme Court of Ohio, entered January 29, 1964, suspending Appellant from the practice of law for an indefinite period of time and submits this statement to show that The Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW

The opinion of The Supreme Court of the State of Ohio is reported in 175 Ohio State Reports, 449. The report of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio, consisting of findings of fact, conclusions and recommendation of the Board of Commissioners are attached hereto as Appendix A.

JURISDICTION

The order and judgment of the Ohio Supreme Court suspending Appellant from the practice of law for an indefinite period of time was entered on January 29, 1964. On February 26, 1964, the Ohio Supreme Court denied Appellant's Application for a Rehearing. Notice of Appeal to the United States Supreme Court was filed on March 9, 1964. The time for docketing this case and the filing of the record was extended to July 7, 1964, by an order of the Court dated May 8, 1964 and signed by the Honorable William J. Brennan, Jr., Associate Justice. The Jurisdiction of this Court is invoked under Title 28 of the United States Code, Section 1257 (2). The following decisions sustain the jurisdiction of the United States Supreme Court to review the judgment on direct appeal in this case: *Lathrop v. Donahue*, 367-US 820; *Williams and Arnest v. Bruffy*, 96 US 176; *Fiske v. Kansas*, 274 US 380; *Niematko v. Maryland*, 340 US 268.

QUESTIONS PRESENTED

1. Where the legislature of the state has, by statute vested the power to discipline, suspend and remove attorneys from the practice of law in the Supreme Court, Courts of Appeal and Common Pleas Courts may the Supreme Court, by its rules of practice, establish a procedure that eliminates the jurisdiction of courts of appeal and common pleas courts over disbarment proceedings and consequently deprive a defendant of the right to a trial by judges, his statutory right to a new trial and appellate review by delegating to a board of commissioners the exclusive power to hear complaints concerning the misconduct of attorneys and submit recommendations to the Supreme Court without violating the due process and equal protection of the law provisions of Section 1 of the Fourteenth Amendment of the United States Constitution.

2. Does the establishment by the Supreme Court of a board of commissioners of grievances and discipline to hear all matters regarding misconduct and discipline of attorneys represent an improper delegation of judicial authority to non-judicial persons where such delegation is unaccompanied by procedural rules relative to charges, pleadings, admissibility of evidence, burden of proof and standards relative to penalties.

3. May a person admitted to the practice of law when charged with misconduct be disbarred or suspended indefinitely from the practice of law which is tantamount to disbarment where the conduct complained of is not shown to be injurious to the public; where the practice complained of is carried on by an employee of an attorney without the knowledge of and against the express orders of the attorney and where there is no challenge to the moral fitness or technical ability of the attorney without depriving such attorney of rights protected by Section 1 of the Fourteenth Amendment to the United States Constitution?

STATUTES INVOLVED

Ohio Revised Code, Chapter 4705.: Attorneys

"Section 4705.02 Suspension or Removal of an Attorney.

"The supreme court, court of appeals, or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. Such suspension or removal shall operate as a suspension or removal in all the courts of the state. The clerk of court upon such suspension or removal shall send a copy thereof to the supreme court, the court of appeals, and to the federal

court of the district in which said attorney resided at the time of trial for such action as is warranted. Judges of such state courts are required to cause proceedings to be instituted against an attorney, when it comes to the knowledge of any judge or when brought to his knowledge of any judge or when brought to his knowledge by the bar association of the county in which such attorney practices that he may be guilty of any of the causes for suspension, removal, or reprimand.

"Section 4705.03 Proceedings against attorney.

"Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel.

"Section 4705.08 Compensation for procurement of legal services prohibited.

"No attorney or other person shall pay or receive any compensation or other consideration, or divide with or receive any portion of a fee, as an inducement or payment for solicitation or procurement of legal services consisting of prosecuting or defending a claim, cause of action, or criminal charge, whether such services are to be performed or such claim or cause of action is to be prosecuted or defended in this state or elsewhere. This section does not prohibit the division of fees between attorneys for services performed by them.

"Any agreement made or contract of employment obtained in violation of this section is void and unenforceable.

"Section 4705.99 Penalties.

"(A) Whoever violates section 4705.07 of the Revised Code shall be fined not less than twenty-five nor more than five hundred dollars.

"(B) Whoever violates section 4705.08 of the Revised Code shall be fined not less than one hundred

nor more than one thousand dollars, or imprisoned not more than thirty days, or both."

Ohio Revised Code, Chapter 2321.: Exceptions; New Trial

"Section 2321.17 New Trial defined; causes for granting new trial.

"A new trial is a re-examination, in the same court, of the issues after a final order, judgment, or decree by the court.

"A final order, judgment, or decree shall be vacated and a new trial granted by the trial court on the application of a party aggrieved, for any of the following causes affecting materially his substantial rights:

"(A) Irregularity in the proceedings of the court, jury, referee, master, or prevailing party, or any order of the court or referee, or abuse of discretion, by which he was prevented from having a fair trial;

"(B) Misconduct of the jury or prevailing party;

"(C) Accident or surprise which ordinary prudence could not have guarded against;

"(D) Excessive damages, appearing to have been given under the influence of passion or prejudice;

"(E) When the action is upon a contract or for the injury or detention of property, error in the amount of recovery, whether too large or too small;

"(F) That the final order, judgment, or decree is not sustained by sufficient evidence, or is contrary to law;

"(G) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at the trial;

"(H) Error of law occurring at the trial and excepted to by the party making the application."

Ohio Revised Code, Chapter 4123.: Workmen's Compensation

"Section 4123.06 Regulation and investigation of attorney fees.

"The industrial commission shall make rules concerning the payment of fees, protect parties against

unfair fees, and fix the amount of fees in the event of a controversy in respect thereto. The commission shall make regulations designed to prevent the solicitation of employment in the prosecution or defense of claims and make and promulgate reasonable rules and regulations designed to promote the orderly and expeditious submission, hearing, and determination of claims and may inquire into the amounts of fees charged employers or claimants by attorneys, agents, or representatives for services in matters before the commission.

"The commission shall suspend from practice before the commission or in the department of industrial relations for such period of time as the commission determines, or reprimand, as the nature of the offense warrants, representatives of claimants or employers who violate any reasonable rules or regulations made and promulgated by the commission under authority of law. If the commission suspends or reprimands any person admitted to practice law, the commission shall notify the Ohio state bar association and the bar association of the community in which such person resides of the action taken by the commission.

"Before such representative is suspended or reprimanded, written charges shall be filed against him by said commission, or by a person directly interested in the results of the services of such representative stating distinctly the grounds of complaint, and a copy thereof, certified by the secretary of the commission, shall be served upon such representative. After such service, such representative shall be allowed a reasonable time to appear and make a defense, introduce evidence, and be heard either in person or by counsel, or both.

"In case an order is made by the commission to suspend or reprimand such representative, such order may be reviewed on appeal on questions of law in the supreme court, which may affirm or modify such order of the commission or dismiss the complaint. Such appeal proceedings shall be filed in the supreme court within forty days after the order of the commission.

"Such commission may readmit any person suspended upon its own motion or upon the written application of the peron so suspended.

"The head of the legal department of the commission shall make the investigations contemplated by this section and enforce this section and the rules promulgated by the commission pursuant to this section. The commisison shall assign to the head of the legal department one of its employees to assist in the administration and supervision of this section and of the rules promulgated under this section."

"Section 4123.88 False representation or solicitation of authority.

"No person shall orally or in writing, directly or indirectly, or through any agent or other person fraudulently hold himself out or represent himself or his partners or associates as authorized by a claimant or employer to take charge of, or represent such claimant or employer in respect of, any claim or matter in connection therewith before the industrial commission, or in or before the department of industrial relations, or any representative thereof. No person shall directly or indirectly solicit authority, or pay or give anything of value to another person or solicit authority, or accept or receive pay or anything of value from another person for soliciting authority, from a claimant or employer to take charge of, or represent such claimant or employer in respect of, any claim which is or may be filed with the commission. No person shall, without prior authority from a member of the commission, the claimant, or the employer, examine or directly or indirectly cause or employ another person to examine any claim file or any other file pertaining thereto. No person shall forge an authorization for the purpose of examining or cause another person to examine any such file. No employee of the commission, notwithstanding the provisions of section 4123.27 of the Revised Code, shall divulge any information in respect of any claim which is or may be filed with the commission to any person other than members of the commission or to the superior of such employee except upon authorization of a member of the commission or upon

authorization of the claimant or employer. No person shall solicit or obtain any such information from any such employee without first having obtained an authorization therefor as provided in this section."

"Section 4123.99 Penalties.

"(A) Whoever violates section 4123.27 of the Revised Code shall be fined not less than one hundred nor more than one thousand dollars.

"(B) Whoever violates section 4123.28 of the Revised Code shall be fined not more than five hundred dollars.

"(C) Whoever violates section 4123.50 of the Revised Code shall be fined not more than five hundred dollars, and where the violation is willful, such person shall be imprisoned not more than ninety days.

"(D) Whoever violates section 4123.72 of the Revised Code shall be fined not more than one hundred dollars or imprisoned not more than ninety days, or both, but no person shall be imprisoned under this division of this section for a first offense, and the prosecution shall always be (as) and for a first offense unless the affidavit upon which the prosecution is instituted contains the allegation that the offense is a second or repeated offense.

"(E) Whoever violates section 4123.81 of the Revised Code shall be fined not more than one hundred dollars.

"(F) Whoever violates section 4123.86 of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than one year, or both.

"(G) (1) Whoever violates section 4123.87 of the Revised Code, if the money, bonds, securities, check or warrant amounts to, or is of the value of thirty-five dollars or more, shall be fined not more than one thousand dollars or imprisoned not more than ten years, or both.

"(2) Whoever violates section 4123.87 of the Revised Code, if the money, check, or warrant is less than thrity-five dollars in amount or value, shall be fined not more than two hundred dollars or imprisoned not more than six months, or both.

"(H) Whoever violates section 4123.88 of the Revised Code shall be fined not less than one hundred nor more than five hundred dollars or imprisoned not more than ninety days, or both.

"(I) Whoever violates section 4123.417 (4123.41.7) of the Revised Code shall be fined not more than five hundred dollars or imprisoned not more than ninety days, or both, and the persons who shall have paid a fee, compensation or gratuity, as prohibited by section 4123.417 (4123.41.7) of the Revised Code may recover by civil action three times the amount thereof, together with a reasonable attorney fee from the person to whom said sum was paid or given."

STATEMENT OF THE CASE

Appellant was admitted to the Ohio Bar in 1954 but was immediately inducted into the Armed Services. Upon his discharge in 1957, he was employed by the Industrial Commission of Ohio as an attorney examiner. In August of 1959, he resigned this position to enter the private practice of law, specializing in workmen's compensation cases. At that time he became associated with a layman who was authorized to represent claimants before the Industrial Commission. This association was limited, however, to the sharing of office space and the sharing of such office expenses as rent and utilities. In January of 1961, Appellant assumed full responsibility of office expenses and employed this layman as an investigator paying him a regular salary plus expenses. Approximately six months later, representatives of the Industrial Commission took statements from certain of Appellant's clients relative to how they happened to be represented by Appellant. These statements were apparently forwarded to the Industrial Commission and the Commission held an informal hearing at which Appellant was advised that the Commission disapproved

of this layman's activities. Appellant thereafter discharged the layman in deference to the Commission's feelings toward this layman. It should be noted at this point, that Appellant's actions in this regard was not requested by the Commission, that body merely suggested changes in operating procedures used by the layman. The Industrial Commission did not charge Appellant with any violation of Section 4123.88 of the Ohio Revised Code which prohibits solicitation of Workmen's Compensation claims, but to the contrary expressed their satisfaction of Appellant's suggestion that he discharge the layman.

On June 11, 1962, Appellee filed a written complaint with the Board of Commissioners on Grievances and Discipline of The Ohio Supreme Court pursuant to the provisions of Rule XVII of that Court. In substance this complaint alleged that Appellant had directly and indirectly solicited professional employment and authority to represent claimants before the Industrial Commission and the Bureau of Workmen's Compensation; that he had used the services of lay persons in and about the state to solicit claimants and had thereby violated Section 4123.88, Ohio Revised Code and Section 4705.08, Ohio Revised Code; that he had thereby violated the Canons of Professional Ethics adopted by the Ohio Supreme Court and his oath of office.

Appellant filed a motion to require Appellee to make its complaint definite and certain to assist him in the preparation of his defense, such motion being an authorized pleading in the civil courts of the state. In essence Appellant asked that Appellee be required to state the names and addresses of claimants allegedly solicited, the names and address of lay persons allegedly soliciting claimants for Appellant, and the dates and places of the alleged solicitations. This motion was never ruled on and subsequently,

of necessity, Appellant filed a general denial to the complaint. Regarding the availability of discovery procedures, however, Appellee, Columbus Bar Association, made written demand on Appellant for the following listed items:

> "1) All office files, papers, memoranda, and all other records, pertaining to persons living in or near Springfield, Ohio, represented by yourself with regard to claims made with the Industrial Commission and/or the Bureau of Workmen's Compensation of the State of Ohio for the period from August 8, 1959 to date.
>
> "2) All checking, savings, and trust account records in your name in any capacity or which you have or had control or partial control pertaining in any manner to your Workmen's Compensation and/or Industrial Commission practice for the period from August 8, 1959 to date.
>
> "3) All payroll, expense, and other financial records pertaining to your Workmen's Compensation and/or Industrial Commission practice for the period from August 8, 1959 to date.
>
> "4) All checking account records in your name in any capacity or over which you have or have had control or partial control for the period from August 8, 1959 to date.
>
> "5) All papers, documents, memoranda, records, agreements, payroll, cancelled checks, office and expense records pertaining to your association with and/or employment of John Meiser.
>
> "6) All papers, documents, memoranda, records, agreements, payroll, cancelled checks, office and expense records pertaining to any and all dealings with Daniel Harmon either by yourself, John Meiser or any other person associated with any of you."

The imbalance in discovery procedures permitted by the Board of Commissioners in this case either because of incomplete procedures or indifference to the rights of Appellant is highlighted by the provisions of Section 2317.33,

Ohio Revised Code, pursuant to which Appellee filed its demand for documents:

> "Section 2317.33 Inspection and copy of books and documents.
>
> "Either party, or his attorney, in writing may demand of the adverse party an inspection and copy, or permission to take a copy, of a book, paper, or document in his possession or under his control, containing evidence relating to the merits of the action or defense specifying the book, paper, or document with sufficient particularity to enable the other party to distinguish it. If compliance with the demand within four days is refused, on motion and notice to the adverse party, the court or judge may order the adverse party to give the other, within the time specified, and inspection and copy, or permission to take a copy of such book or paper, or document. On failure to comply with such order, the court may exclude the paper or document if offered in evidence, or if wanted as evidence by the party applying, may direct the jury to presume it to be such as the party, by affidavit, alleges it to be. This section does not prevent a party from compelling another to produce any book or paper, or document when he is examined as a witness."

This statute clearly gave the Appellee, the Columbus Bar Association, a tremendously unjust advantage over Appellant in the preparation of its case when it is remembered that no action was taken on Appellant's motion to have the complaint made definite and certain to assist him in the preparation of his defense.

This matter came on for hearing before three attorneys who heard the evidence, made findings of fact and recommended Appellant be suspended indefinitely. Based on the Report of the Commissioners the Ohio Supreme Court issued an order to Appellant to show cause why the recommendations of the Commission should not be followed.

Appellant filed the following exceptions to said report in the Ohio Supreme Court:

> "1. That the findings and Conclusions of the Board of Commissioners on Grievances and Discipline to the effect that the Respondent has been guilty of misconduct within the meaning of Paragraph 5 of Rule XXVII of the Supreme Court of Ohio are not supported by the evidence.
>
> "2. That the Findings and Conclusions of the Board of Commissioners on Grievances and Discipline are not supported by the law.
>
> "3. That the Respondent was not afforded a fair legal hearing before the Panel inasmuch as the Panel refused to rule upon certain requests and motions made by the Respondent.
>
> "4. That the entire proceedings before the Panel deprived this Respondent of due process.
>
> "5. That the entire proceedings before the Panel was unconstitutional.
>
> "6. That the Board of Commissioners on Grievances and Discipline never examined the record to determine the sufficiency of the charges and evidence against the Respondent.
>
> "7. That the recommendations of such Board to the Supreme Court recommending that the Respondent, Stanley Jurus, be suspended indefinitely from the practice of law are not justified or supported by the evidence, and are unduly harsh and severe."

Appellant submits that at this point the required Federal question was squarely placed before the Ohio Supreme Court. The Appellant again protested the violation of his rights under Section 1 of the Fourteenth Amendment to the United States Constitution in his application for a rehearing in the Ohio Supreme Court in the following language:

> "Respondent further requests this Honorable Court to grant the above rehearing on the basis that Respondent was denied his constitutional rights in violation of

the Constitution of the State of Ohio, and the Constitution of the United States. Respondent specifically contends that the license to practice law granted herein involves a property right and that the procedures under Rule 27 is contrary to the statutes of this state, to-wit: Sections 4705.02, 4705.03 and 4705.04 of the Revised Code of the State of Ohio, and therefore, Respondent has been denied rights afforded him under the laws of this state and thus denied his due process of law."

This application for rehearing was denied without comment on the Federal Constitutional question.

THE QUESTIONS ARE SUBSTANTIAL

The issue as to substantive due process involved in this appeal must be resolved by the same principles followed in such cases as *Konigsberg v. State Bar of California*, 353 US 252, and *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 US 232. Issues relative to the extent of discretion of Courts in rendering judgments in disciplinary proceedings where such judgments clearly constitute punishment and not protection of the public are governed by the principles announced by this Court in *Ex Parte Wall, 107 U. S. 265.* These issues are important to all lawyers in the State of Ohio as there has been a very apparent erosion of the rights of attorneys to equal protection of the law and at the same time a noticeable increase in disciplinary proceedings with more severe penalties being handed out.

The Legislature of the State of Ohio has clearly vested the right to suspend or remove attorneys in the Supreme Court, the Courts of Appeal and the Common Pleas Courts of the state. The language of the statute granting the courts this power embraces all forms of discipline from

private reprimand through disbarment. The statute in question reads in pertinent part as follows:

> "Section 4705.02 Suspension and removal of an attorney.
>
> "The supreme court, court of appeals or court of common pleas may suspend or remove an attorney at law from office or may give private or public reprimand to him as the nature of the offense may warrant, for misconduct or unprofessional conduct in office involving moral turpitude, or for conviction of a crime involving moral turpitude. * * *".

This provision has long been a part of Ohio law. In 1957, however, the Ohio Supreme Court, by amendment of its rules, usurped the jurisdiction of the Courts of Appeal and the Common Pleas Courts by establishing a Board of Commissioners on Grievances and Discipline and vesting in such Board the power to preside over disbarment proceeding. The pertinent parts of amended Rule XXVII read as follows:

> "Pursuant to the powers of this Court over the Bar of this State and the members thereof, Rule XXVII is hereby amended as follows, effective on January 1, 1957, and to remain in force until altered or abrogated.
>
> "(1) There is hereby created as Commissioners of this Court a Board of Commissioners on Grievances and Discipline. * * *
>
> "(2) JURISDICTION OF BOARD. The Board of Commissioners is empowered and charged to receive, entertain, inquire into, take evidence, make findings and submit recommendations to this Court, as hereinafter provided,
>
> "(a) concerning complaints of misconduct as hereinafter defined, which are alleged to have been committed by an attorney and counselor at law or judge, or
>
> "(b) concerning the mental illness of any attorney and counselor of law or judge, or

"(c) relating to petitions for reinstatement as an attorney and counselor at law in this State.

"* * *

"(4) APPLICATION OF RULE; AUTHORITY AND DUTY OF LOCAL COMMITTEES. From and after the effective date of this rule, all proceedings with regard to mental illness and complaints and grievances involving alleged misconduct by attorneys and counselors at law and judges, all proceedings for the discipline of such attorneys and counselors at law and judges and all proceedings for reinstatement as an attorney and counselor at law shall be brought, conducted and disposed of in accordance with the provisions of this rule, and any committee of any regularly organized bar association or of the Ohio State Bar Association shall investigate any matter referred to it or which comes to its attention, and may cause a complaint to be filed pursuant to this rule in cases where misconduct or mental illness is found; provided, however, that nothing herein shall affect disciplinary procedures of any regularly organized bar association under the provisions of its constitution not inconsistent with this rule.

"The Board of Commissioners or any member thereof, the Chairman of the Committee on Legal Ethics and Professional Conduct of the Ohio State Bar Association, and the President, Secretary or Chairman of the Grievance Committee of any regularly organized local bar association in the State may call upon any attorney and counselor at law or judge in the State to assist in any investigation or to testify in any hearing before the Board of Commissioners or any panel for which provision is made in this rule, as to any matter as to which he would not be bound to claim privilege as an attorney at law. No such attorney and counselor at law or judge shall neglect or refuse so to assist in any such investigation or so to testify.

"* * *

"(10) HEARING BY PANEL OF THREE COMMISSIONERS. After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall

be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

"The Chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

"* * *

"(15) PUBLIC REPRIMAND; SUSPENSION OR PERMANENT DISBARMENT; DUTY OF BOARD AFTER REVIEW. If the Board of Commissioners determines that a public reprimand, suspension for an indefinite period from the practice of law or permanent disbarment is merited, said Board of Commissioners shall thereupon make a final certified report of such proceedings, including its findings of fact and recommendations, and shall file the same, together with the transcript of testimony taken and an itemized statement of the actual and necessary expenses incurred in connection with such proceedings, in the office of the Clerk of this Court, and shall forthwith notify the Respondent and all counsel of record of such action, enclosing with such notice a copy of the findings of fact and recommendations and a copy of the statement of the actual and necessary expenses incurred.

"(16) SHOW CAUSE ORDER ISSUED BY THE COURT TO RESPONDENT. On the filing of such final report of the Board of Commissioners, this court shall issue to the Respondent an order to show cause why the report of said Board of Commissioners shall not be confirmed and a disciplinary order entered. Notice of the order to show cause shall be served by the Clerk of this Court on the Respondent and all counsel of record, personally or by registered mail.

"* * *."

Procedurally this system of handling disciplinary proceedings deprived Appellant of the following statutory rights granted him by the Ohio Revised Code:

"Section 4705.03 Proceedings against attorney.

"Before an attorney at law is suspended or removed, or publicly or privately reprimanded, written charges must be filed against him, stating distinctly the grounds of complaint, and a copy thereof, certified by the clerk, under the seal of the court, served upon him. After such service, such attorney shall be allowed a reasonable time to collect and present testimony in his own defense, and he shall be heard by himself or counsel."

"Section 2321.17 New trial defined; causes for granting new trial.

"A new trial is a re-examination, in the same court, of the issues after a final order, judgment, or decree by the court.

"A final order, judgment or decree shall be vacated and a new trial granted by the trial court on the application of a party aggrieved, for any of the following causes affecting materially his substantial rights:

"(A) Irregularity in the proceedings of the court, jury, referee, master, or prevailing party, or any order of the court or referee, or abuse of discretion, by which he was prevented from having a fair trial;

"(B) Misconduct of the jury or prevailing party;

"(C) Accident or surprise which ordinary prudence could not have guarded against;

"• • •

"(F) That the final order, judgment, or decree is not sustained by sufficient evidence, or is contrary to law;

"(G) Newly discovered evidence, material for the party applying, which with reasonable diligence he could not have discovered and produced at the trial;

"(H) Error of law occurring at the trial and excepted to by the party making the application."

"Section 4705.04 Review of proceedings.

"In case of suspension or removal of an attorney at law by the court of common pleas, an appeal on questions of law may be had to the court of appeals, and the

> sentence of either the court of common pleas or the court of appeals, may be reviewed on appeal on questions of law in the supreme court. If such suspended or removed attorney shall desire a modification of the decree of suspension or removal, he shall file a written motion therefor in the court which entered such decree."

While it might be argued that the provisions of amended Rule XXVII of the Ohio Supreme Court, despite its shortcomings, would in the absence of foregoing statutory procedure, constitute adequate procedural due process of law one would have to be extremely naive to expect a panel of competitors to judge his conduct with the same objectivity that members of the judiciary would bring to the proceedings. The same would be true relative to the conduct of the proceedings themselves as acknowledged by the Ohio Supreme Court when commenting on the qualifications of judges in the case of *Mahoning County Bar Association v. Franko*, 168 Ohio State 17 (1958). This case involved disbarment proceedings against a judge.

> "It is for this reason that the requirement by the legislative branch of our government that all judges of the state shall be attorneys who have been admitted to the practice of law for a specified number of years can lead only to the conclusion that the General Assembly demands that judges of the state shall not only have met the standards of character and knowledge of the law required by this Court for admittance to the practice of law, but that they shall also have maintained, for a specified number of years, and must continue to maintain the high ethical standard of conduct required by this Court. It follows that the requirement by the Supreme Court of Ohio that attorneys who are judges shall adhere to a specialized code of ethics, i.e., the Canons of Judicial Ethics is in accord with the legislative intent that the judges of this state shall be persons who must adhere to the highest possible standard of ethical conduct."

In substance, both the State Legislature and the Ohio Supreme Court have recognized the fact that judges are expected to be a "cut above" attorneys in both competence and ethics. Appellant was, by law, entitled to a formal trial in a court of law by competent qualified judges charged with a specific duty of conducting a fair trial together with certain rights of appeal. The action of the State of Ohio through its Supreme Court has deprived Appellant of these rights by forcing him to submit to disbarment proceedings presided over by competing lawyers without right of appeal and heve thereby deprived him of the procedural due process of law and equal protection of the law guaranteed him by Section 1 of the Fourteenth Amendment of the United States Constitution and the jurisdiction of this Court is invoked pursuant to the decision of this Court in the case of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 US 232, wherein Mr. Justice Black in delivering the opinion of the Court stated as follows:

> "A state cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment."

Directing the Court's attention to the Findings of Fact submitted to the Ohio Supreme Court by the Board of Commissioners it should be noted that the evidence which left such a lasting impression on them are indeed fragile and scant support for their conclusion that Appellant had violated the Canons of Ethics as charged in the complaint. These impressive facts were as follows:

> "At the time of the hearing (1962) he (Appellant) had had about two and one half years of lucrative practice although he had been engaged in the practice

since August 1959. The facts further disclose that the respondent is presently the owner of three Cadillac automobiles, two 1961 and one 1960, and that in his files he has between six and nine hundred active cases, not counting cases previously disposed of.

"It is further shown that during the year of 1961 he paid John Meiser the sum of $13,349.69 by way of salary and expenses. * * *"

In summarizing their report, the Board of Commissioners comment as follows:

"It is quite difficult for the Board to believe that an investigator performing the duties outlined would be paid by way of salary and expenses the sum of $13,349.69 in one year. The board further finds it difficult to believe that a young lawyer in the practice only three years could progress to the point where he needed an auditor to take care of his books, would accumulate three Cadillac automobiles, and have between six and nine hundred active cases in his files by the ordinary process of building up a law practice.

"In several instances Respondent said that he had destroyed his files because of the fact that in the Industrial Commission file he found affidavits to the effect that he had solicited the cases. The Board feels that he owed a duty to follow through and determine the truth or falsity of these affidavits rather than summarily destroy his files. The Board cannot be unmindful of the fact that neither Jack Webster nor Daniel Harmon were called on behalf of the respondent."

This Court is urged to consider the following facts in reviewing these comments by the Board of Commissioners. First and most significantly, their report contains excerpts of testimony from complainant's witnesses but they make no comment on conclusions reached on the specific issue of whether or not these witnesses were solicited clients of Appellant and if so, who is guilty of soliciting them. Secondly, if laymen were guilty of soliciting clients for Ap-

pellant, why didn't the Board recommend prosecution of Appellant and his alleged solicitors pursuant to the provisions of Section 4705.08, Ohio Revised Code. Thirdly, the Court will note in examining the record that Mr. James Justice, one of the prosecutors for Appellee, admitted that the destruction of these files was of little significance as he did not expect to find any incriminating evidence therein and Appellee, as a result of Appellant's failure to produce them, had a right to indicate by affidavit what evidence these contained and the affidavit would have been admissible in evidence. Finally, the Board found it significant that two of the alleged lay solicitors were not called as witnesses for Appellant. The record clearly shows that both of these men were subpoenaed by the Columbus Bar Association as witnesses, one it develops was out of the jurisdiction, the other was present but not called by the complainant. Shouldn't an objective reviewing body be equally mindful of that fact.

When it is recalled that Appellant's activities as well as his lay employee's activities were thoroughly investigated by the Industrial Commission during the same period covered by this complaint without charges of solicitation being brought by the Industrial Commission it seems difficult to escape the conclusion proof of solicitation of workmen's compensation cases means one thing to the Industrial Commission and quite a different thing to the Board of Commissioners on Grievances and Discipline.

The burden of proof in disbarment proceedings when such proceedings were held in courts of law in Ohio was established by the Ohio Supreme Court in the case of *In Re: Disbarment of Lieberman*, 163 Ohio State 35 (1955), the fifth paragraph of the syllabus of which reads as follows:

> "The degree of proof required in a disbarment proceeding is a preponderance of the evidence."

Remembering that the complaint herein specifically charged Appellant with both direct and indirect solicitation and the employment of laymen for this purpose the Board of Commissioners owed a duty to Appellant and the Ohio Supreme Court to set out in its findings of fact the specific persons solicited, the acts constituting solicitation and the person guilty of the solicitation so that the Ohio Supreme Court in reviewing their conclusion could determine whether the facts supported the conclusion. The mere fact that Appellant was successful or that he paid a layman who he thought was the best investigator available a higher salary than they would have and accepted his oral accounting of expenses does not constitute sufficient proof of solicitation to justify depriving an attorney of his constitutional right to practice law for as this Court said in the case of *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 US 232:

> "We need not enter into a discussion whether the practice of law is a 'right' or 'privilege'. Regardless of how the States grant of permission to engage in this occupation is characterized, it is sufficient to say that a person cannot be prevented from practicing except for valid reasons. Certainly the practice of law is not a matter of the States' grace."

Appellant contends that the inability of the Board of Commissioners to particularize the persons, places, times and acts constituting Appellant's guilt of the charges alleged in the complaint is nothing less than a tacit admission by the Board that the Columbus Bar Association completely failed to meet the burden of proof required to justify the suspension of Appellant from the practice of law and that

there is in this case a substantial showing that the State of Ohio has overridden Appellant's right to practice law as secured by the Federal Constitution and this Court has jurisdiction to examine the evidence on appeal. To this effect see *Sterling v. Constantin*, 287 US 378, where under similar circumstances this Court concluded as follows:

> "When a question of law and fact are so intermingled as to make it necessary in order to pass upon the Federal question, the Federal Court *may and should* analyze the facts." (Emphasis added)

A more subtle but equally important aspect of this case also merits this Court's consideration. A land mark case in Ohio on the subject of disbarment contains the following explanation of the function or purpose of disbarment:

> "The proceeding is not for the purpose of punishment, but for the purpose of preserving the courts of justice from the official ministration of persons unfit to practice them. Undoubtedly, the power is one that ought always to be exercised with great caution; and ought never to be exercised except in clear cases of misconduct which affect the standing and character of the party as an attorney." See *In Re: Thatcher*, 80 Ohio State 492 at page 670.

Since it is universally accepted that punishment is not the purpose of disbarment and since Appellant has in effect stood trial before two bodies authorized to examine his practice and essentially the same facts were before both bodies what purpose can disbarment or suspension of Appellant serve if not punishment when he had, prior to these proceedings, discharged the employee whose procedures displeased the Industrial Commission especially since the period covered by the complaint coincided with the period during which Appellant employed the layman.

To be reinstated Appellant must satisfy the Board of Commissioners who recommended his suspension that he has rehabilitated himself. Discharge of a trusted and competent employee without proof of his guilt of proscribed conduct is clear proof of Appellant's desire to comply with the requirements of both the Bar and the Industrial Commission. What further act of rehabilitation, if such be a proper word, can Appellant ever produce to satisfy the Board of Commissioners of his fitness to be an attorney in the State of Ohio. Clearly the State's action in this case can only be characterized as arbitrary.

It is respectfully submitted that it is necessary for this Honorable Court to settle the question of whether Attorneys are being accorded due process of law secured to all citizens, regardless of occupation, by Section 1 of the Fourteenth Amendment of the United States Constitution, when the Ohio Supreme Court, by administrative fiat, establishes an exclusive procedure to be followed in disciplinary proceedings against attorneys when such procedures are foreign to, differ from, and conflict with the due process proceedings established by state law i. e., Can it be due process of law under the Fourteenth Amendment when a procedure followed is foreign to and different from the due process procedure established by state law?

It is also necessary for this Honorable Court to settle the question of whether or not duly licensed attorneys may be deprived of their right to practice law as secured to them by Section 1 of the Fourteenth Amendment to the Constitution of the United States upon the recommendation of a Board of Commissioners on Grievances and Discipline where the complainive authority has failed to establish the charges of misconduct by competent, substantial evidence, where said procedure does not provide for a trial

de novo before the disbarring Court. The decision of the Ohio Supreme Court conflicts with prior decisions of this Court and many other Courts of last resort in this regard.

Respectfully submitted,

GEORGE E. TYACK,
Attorney for Appellant.

Ohio Supreme Court, U.S.
FILED

[redacted]

[redacted]

[redacted]

[redacted]

STANLEY JUDD,

Appellant,

vs.

THE COLUMBUS BAR ASSOCIATION,

Appellee.

[redacted]

[redacted]

[redacted]

[redacted]

No. 260

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

On Appeal from the Supreme Court of Ohio

STANLEY JURUS,

Appellant,

vs.

THE COLUMBUS BAR ASSOCIATION,

Appellee.

MOTION TO DISMISS

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MOTION TO DISMISS

Now comes the Columbus Bar Association, Appellee, in the above entitled case, and moves to dismiss this appeal on the grounds that no jurisdiction attaches for the following reasons:

A) the three questions presented by appellant were not timely or properly raised in the state court proceedings;

B) the three questions presented by appellant are so unsubstantial as to need no further argument.

ARGUMENT

The Questions Presented by Appellant Were Not Timely or Properly Raised in the State Court Proceedings.

Appellant's Jurisdictional Statement is divided into three main categories which are 1) Questions Presented; 2) Statement Of The Case; and 3) The Questions Are Substantial.

Only under the main heading in said Jurisdictional Statement entitled Statement of the Case do we find any reference by Appellant as to when and how the Federal questions were raised. Thus at pages 13 and 14 of said Jurisdictional Statement we find Appellant setting out the objections that were made to the report of the Board of Commissioners. Of these objections the only ones that purport to raise any constitutional question are numbers 4 and 5 which we quote as follows:

4. "That the entire proceedings before the Panel deprived this Respondent of due process."
5. "That the entire proceedings before the Panel were unconstitutional."

The listing of said Objections is then followed by Appellant's statement at page 13 as follows:

> "Appellant submits that at this point the required Federal question was squarely placed before the Supreme Court."

It should be noted here that nowhere in said Objections is there even a direction as to whether the Appellant was referring to the state or Federal Constitution, let alone any degree of preciseness as to the particular Federal question sought to be raised. Here we note this Court's holdings that allegations of a generalized nature as to unconstitutionality have been held to refer to the constitution of the state in question, and further that the Federal question and grounds for same must be called to the state court's attention with precision. *New York ex rel. Bryant v. Zimmerman*, 278 U.S. 63, 67-68; 49 S. Ct. 61, 73 L. ed. 184; *Bowe v. Scott*, 233 U.S. 658, 664-665, 34 S. Ct. 769, 58 L. ed. 1141.

The only reference to the Constitution of the United States found in the entire state court proceedings is in Appellant's Application for Re-Hearing filed with the Supreme Court of Ohio after its determination. In *Herndon vs. Georgia* (1935), 295 U.S. 441, 79 L. ed. 1530, 55 S. Ct. 794 this Court stated at page 443:

> "The long established general rule is that the attempt to raise a federal question after judgment, upon a petition for rehearing, comes too late, unless the court actually entertains the question and decides it."

Prior to said Application for Re-Hearing the only reference to any constitution is in counsel's opening statement before the Hearing Panel of the Board of Commissioners, beginning at the last paragraph, 2nd sentence, page 2 of the record from which we quote as follows:

> "I sincerely question the right of this Board to proceed with this proceeding on the ground that under the *constitution of this state* the Industrial Compensation matters are specifically reserved as a legislative matter." (emphasis ours)

Only in Appellant's Jurisdictional Statement filed with this Court, do we find for the first time Federal questions being presented with any particularity or even a semblance of a degree of preciseness.

The questions presented herein were not timely raised nor properly framed in the state court proceedings. *Godchoux Co. v. Estopinal*, 251 U.S. 179, 181, 64 L. ed. 213, 40 S. Ct. 116; *Beck v. Washington* (1961), 369 U.S. 541, 550, 8 L. ed. 2d 98, 82 S. Ct. 955. Further we quote from *Oxley Stave Co. v. Butler County*, 166 U.S. 648 at page 655, 17 S. Ct. 709, 41 L. ed. 1149:

> "* * * the jurisdiction of this court to re-examine the final judgment of the state court cannot arise from mere inference but only from arguments so distinct and positive as to place it beyond question that the party bringing a case here from such court intended to assert a Federal right."

Appellant objects to the failure of the Hearing Panel to rule on his Motion to Make Definite and Certain. However, we can finding nothing in the record from which a Federal question in this connection can even be inferred. Further we quote from counsel for Appellant in his opening statement at page 2 of the record as follows:

> "I filed what would be equivalent to a motion to make definite and certain in a civil action or a request for a bill of particulars in a criminal case and it is my understanding that my motion as such was overruled on the ground that the rule did not provide for anything except an answer.

> "I will say that Mr. Justice, this last week, furnished me the names of a number of people who apparently were being called as witnesses and whose names will be, no doubt, involved and we received more yesterday.
> "I might also say that the communication indicated that they are not restricted to those names nor were they required to present all of them, which is surely an understandable ground rule for this proceeding but I wanted to point out to show that there seemed to be limited things which we as the Respondent can learn and can do."

While we believe it is unnecessary, we nonetheless comment that on those matters sought to be made more definite and certain it would, in our opinion, have necessitated a recital of evidentiary material and thus improper pleading in civil practice. We note that at page 11 of Appellant's Jurisdictional Statement comment about Appellee's Demand for Documents prior to trial. Appellant neglects however, to mention that this demand was not even substantially complied with by Appellant prior to trial so it could hardly have been prejudicial.

Finally, in reviewing the opinion of the Supreme Court of Ohio (Appellant's Appendix A) and the Findings of Fact and Recommendation of the Board (Appellant's Appendix B), we note no reference, comment or allusion to a constitutional question, either general or specific.

The Questions Are So Unsubstantial As Not to Need Further Argument.

Before proceeding to review the questions herein presented in the light of their alleged substantiality, we reiterate our position that said questions herein presented by the Appellant were not timely or properly raised in the state court proceedings. For this reason it is our position that the discussion, as hereinafter relating to the unsubstantiality of such questions, can be termed "academic".

Questions 1 and 2

The first two questions presented by Appellant relate directly to the inherent power of the Supreme Court of Ohio to assume original jurisdiction to discipline attorneys and to provide the rules and basis for such discipline.

Certainly there is no question of the inherent power of the Court to discipline attorneys and provide by rule the procedure and basis for such discipline. *Cleveland Bar Association v. Pleasant*, (1958) 167 O.S. 325, 148 NE 2d 493, Cert. den. 358 U.S. 842; *Mahoning County Bar Association v. Franko*, 168 O.S. 17, 151 NE 2d 17, Cert. den. 358 U.S. 932.

As respects legislative enactments which vest power in various courts including the courts of appeal and the common pleas courts as well as the Supreme Court of Ohio, we fail to see where the question of the elimination of the courts of appeal or the common pleas court is at issue here. We are here concerned only with the inherent power of the Supreme Court of Ohio to exercise original jurisdiction in the disciplining of attorneys.

We quote branch 2 of the Syllabus in *Re McBride*, 164 O.S. 419 (1956), 132 NE 2d 113, Cert. den. 351 U.S. 965, at page 419 as follows:

> "The legislative branch may provide by statute standards and qualifications for admission to the bar and methods for the initiation and conduct of proceedings to disbar, suspend or otherwise discipline attorneys for specified causes, but such legislation is to be interpreted as an aid and not as a limitation on the powers of the judicial branch in these respects."

Review of other jurisdictions establish that statutes which provide certain specified grounds for suspension or disbarment do not limit the inherent power of the Court

to suspend or remove attorneys for other causes than those mentioned in the statute. *State v. Mosher*, 128 Iowa 82, 103 NW 105; *Lenihan v. Commonwealth*, 165 Kentucky 93, 176 SW 948; *Re Ebbs*, 150 N.C. 44, 63 SE 190; *Wolfe's Disbarment*, 288 Pa. 331, 135 A 732, 50 ALR 380.

We find Appellant citing the cases of *Konigsberg v. State Bar of California*, 353 U.S. 252, 1 L ed 2d 810, 77 S Ct 722, and *Schware v. Board of Bar Examiners of the State of New Mexico*, 353 U.S. 232, 1 L ed 2d 796, 77 S Ct 752, as presenting the same principle as herein. We fail to see the relevancy of these "admission to the bar" cases. They did not involve persons admitted to practice law and bound by the Canons of Professional Ethics. Nonetheless, can it be said here that there is any substantial question as to the rational connection between the discipline imposed in the instant case and the violation of Canons 27 and 28 of the Canons of Professional Ethics as well as the solicitation of legal employment in violation of *Section 4705.08 of the Revised Code of Ohio* as found by the Board of Commissioners and confirmed by the Supreme Court of Ohio? Additionally it should be pointed out that the entire hearing before a panel of three commissioners was reviewed by the entire Board which was followed by review by the Supreme Court of Ohio.

Appellant objects to what he terms "trial by competitors". Appellant draws a completely unwarranted inference that such trial cannot be objective and Appellant neglects to discuss the review requirements of the full Board of Commissioners as well as the Supreme Court of Ohio. We only point to the many boards and commissions in local, state and Federal government which act as fact finders but whose findings are subject to review as herein.

Comment is made by the Appellant that the Industrial Commission brought no charges of solicitation. This is

totally irrelevant and merits only the comment that it was not nor is it our function to evaluate the policies or enforcement machinery of a state political agency.

Next Appellant comments, apparently inferring criticism, upon the burden of proof in disciplinary cases in Ohio, which is that of a preponderence of the evidence. As Appellant indicates this burden was established in the case of *In Re Lieberman*, 163 O.S. 35. Here again we fail to see the relevancy of Appellant's comments in this regard since apparently his objections are directed at said amended Rule XXVII and here we emphasize that the *Lieberman* case was decided in 1955 which was before the adoption of said amended Rule XXVII.

Due process in disciplinary proceedings requires that the attorney receive notice of such proceedings and opportunity to defend and a hearing and that the proceedings be essentially fair. *Bradley v. Fisher* (US) 13 Wall 335.

Quoting from *7 Am. Jur.* 2, Attorneys at Law, Section 64 at page 87, we find the following:

> "The proceedings are deemed free of any due process defects, so far as procedure is concerned, if the basic requirements of notice and hearing are met; the form of the notice and hearing is immaterial. (Randall v. Bringham, (U.S. 7 Wall 523) * * *"

Appellant is critical of the "Findings" of the Board of Commissioners. Essentially the Appellant is saying that the facts do not support the Board of Commissioners conclusion which is recited in the decision of the Supreme Court of Ohio in the following language beginning at page 449:

> "The board concluded the respondent used his investigators to solicit professional employment, and that he thereby violated Canons 27 and 28 of the Canons of Professional Ethics adopted by the Supreme Court of Ohio."

Appellant conveniently and for his own purposes sets out only certain portions of said "Findings" and then draws his *own* conclusions therefrom. For example Appellant criticizes the Board's references to the fact that two of the alleged solicitors of legal employment for the Appellant were not called as witnesses by him. Frankly we fail to see how this cursory analysis and critique of the evidence is pertinent here or even related to the substantiality of any Federal question.

Appellant cites the case of *Sterling v. Constantin*, 287 U.S. 387, 77 L. ed. 375, 53 S. Ct. 190, for the proposition that this Court has jurisdiction to examine the evidence on appeal. Our understanding of the present status of the case herein, however, with regard to jurisdiction necessitates a determination as to 1) whether there was a Federal question timely raised and properly framed in the state court proceedings, and 2) whether the Federal question is substantial. The answer is clearly no to both questions. We do not find *Sterling v. Constantin* relevant to either question and note that that case involved regulation to limit a complainant's oil production by executive order of the Texas Governor under the cloak of state constitutional powers. There was no hearing and it was Governor Sterling's contention that the Federal Court had no right to review whether there was in fact a "necessity" underlying said order. This Court upheld the right of the Federal court to make judicial determination as to such necessity.

Question 3

These proceedings were brought by the Columbus Bar Association with respect to violations of the Canons of

Professional Ethics. The gravamen of the charges and proof related to Appellant's employment of one John Meiser for purpose of soliciting professional employment on behalf of Appellant. Appellant, in the phrasing of this third question states that he had no knowledge of the practices of said lay employee. This is clearly not so from the record or the Findings of the Board of Commissioners. Further, that Appellant had discharged said employee after an investigation by the Industrial Commission and before the proceedings in question has no significance with respect to the discipline imposed. This is analogous to saying that an attorney who returns money he has wrongfully taken after some responsible authority makes inquiry should not be subject to a disciplinary proceeding since he has established his rehabilitation. We fail to see that Appellant's comments lend support to his argument as to the substantiality of a Federal question in this regard.

Certainly it should not be necessary to cover in any detail the reasons underlying the prohibition relating to solicitation apart from the simple fact that solicitation *lowers the dignity of the profession and lends itself to* myriad unethical and even criminal practices on the part of attorneys in the handling of cases solicited in order that the attorney might justify representations and promises made to persons solicited with respect to the value and merits of their cases. Review of *7 Am. Jur. 2d*, Attorneys at Law, Sections 40 and 42 reveal that courts all over the country have disbarred or suspended attorneys for the solicitation of professional employment.

In this respect we quote directly from Justice Harlan in *Cohen v. Hurley* (1961), 366 U.S. 117, 6 L. ed. 2d 156, 81 S. Ct. 954, where at page 124 he states:

"It is no less true than trite that lawyers must operate in a three-fold capacity, as self-employed businessmen as it were, as trusted agents of their clients, and as assistants to the court in search of a just solution to disputes. It is certainly not beyond the realm of permissible state concerns to conclude that too much attention to the business of getting clients may be incompatible with a sufficient devotion to duties which a lawyer owes to the court, or that the 'payment of awards to persons bringing in legal business' is inconsistent with the personally disinterested position a lawyer should maintain."

The penalty of indefinite suspension has been approved for solicitation in the workmen's compensation fields in proceedings had under said Amended Rule XXVII. *Cleveland Bar Association v. Fleck* (1961), 172 O.S. 467, 178 N.E. 2d 782, Cert. den. 369 U.S. 861; *Dayton Bar Association v. Herzog* (1962), 173 O.S. 313;

CONCLUSION

The basic questions presented by Appellant relate to amended Rule XXVII of the Rules of Practice of the Supreme Court of Ohio and the application thereof. In this connection we quote branch 3 of the Syllabus at page 17 of *Mahoning County Bar Assn. v. Franko*, 168 O.S. 17, 151 NE 2d 17, Cert. den. 35 U.S. 932 as follows:

> "The Supreme Court of Ohio has inherent jurisdiction over proceedings relating to the disciplining of members of the legal profession of this State, resulting from the Supreme Court's organization as such as well as from its inherent exclusive power of admission, and it may provide by rule both the basis for and the procedure to be followed with reference to such disciplining. (Paragraph one of the syllabus of *In re Thatcher*, 80 Ohio St. 492 and *Cleveland Bar Association v. Pleasant*, 167 Ohio St., 325, approved and followed.)."

Appellant has not presented any Federal question in his jurisdictional statement which was timely or properly raised in the state court proceeding.

Further Appellant has not presented any substantial Federal question. For these reasons the appeal should be dismissed.

Respectfully submitted,

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Harry Lewis
Counsel for Appellee
Richard L. Loveland
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Office-Supreme Court, U.S.
FILED
NOV 5 1964
JOHN F. DAVIS, CLERK

No. 260

IN THE

Supreme Court of the United States

October Term, 1963

STANLEY JURUS,

Appellant,

vs.

COLUMBUS BAR ASSOCIATION,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

Petition For Rehearing of Order Denying Petition for Writ of Certiorari

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IN THE

Supreme Court of the United States

October Term, 1963

No. 260

STANLEY JURUS,

Appellant,

vs.

COLUMBUS BAR ASSOCIATION,

Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF OHIO

Stanley Jurus, Appellant, prays that this Court grant rehearing of its order of October 12, 1964 denying the petition for writ of certiorari and that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Ohio in the above-entitled case as prayed for in the petition filed July 7, 1964.

Reasons For Granting Rehearing And Issuing Writ

1. At the time of this Court's order of October 12, 1964, there was pending before this Court on appeal from the Ohio Supreme Court, the case of *Mahoning County Bar Association vs. John Ruffalo, Jr.*, No. 497 (176 Ohio State 263). The decision of the Ohio Supreme Court in this case,

as indicated by Judge Herbert in his dissenting opinion, is in conflict with the decisions of this Court in the cases of *Brotherhood of Railroad Trainmen v. Virginia ex rel. Virginia State Bar*, 12 L. Ed. 2d 89, 84 S. Ct. 1113, and *National Association for the Advancement of Colored People vs. Robert Button*, 371 U.S. 415, 9 L. Ed. 2d 405.

The decisions of this Court in both the *Brotherhood of Railroad Trainmen* and *NAACP vs. Button* cases clearly grant lawyers representing clients solicited and referred to them by the *Brotherhood* and the *NAACP* immunity from disciplinary proceedings for violation of the Canons of Professional Ethics relative to solicitation.

If the error of the Ohio Supreme Court in failing to follow the dictates of this Court under substantially similar circumstances, as in the *Ruffalo* case, is corrected there will arise a substantial Federal constitutional question not available to this petitioner at the time his appeal was perfected. The question to which petitioner has reference is whether the equal protection clause of the Fourteenth Amendment to the United States Constitution prohibits the creation of a class of lawyers immune from disciplinary proceedings for accepting employment from persons known to have been solicited and deny this immunity to lawyers generally?

This Court held in *Old Dearborn Distributing Company, vs. Seagram-Distillers Corporation*, 299 US 183, 81 L. Ed. 109 that:

> "The equal protection clause of the Fourteenth Amendment does not preclude the states from resorting to classification for the purpose of legislation, but only requires that the classification be reasonable, not arbitrary, and rest upon some ground of difference having a fair and substantial relation to the objects of the legislation, so that all persons similarly circumstanced shall be treated alike."

A classification among attorneys based solely on the type of client represented is clearly arbitrary and constitutes unjustifiable discrimination against the lawyers of the State of Ohio.

2. The question to which this petition for rehearing is directed is one of great general interest to all lawyers and the majority of states as the permissible scope of state regulation of the practice of law has been seriously clouded by the pronouncements of this Court in *Brotherhood of Railroad Trainmen vs. Virginia ex rel. Virginia State Bar*, 12 L. Ed. 89, 84 S. Ct. 1113 and *National Association for the Advancement of Colored People v. Robert Button*, 371 US 415, 9 L. Ed. 2d 405.

CONCLUSION

For the reasons set forth above and in the petition for writ of certiorari, it is respectfully urged that rehearing be granted and that upon such rehearing, a writ of certiorari issue to the Supreme Court of the State of Ohio.

Respectfully submitted,

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Counsel for Petitioner.